

The maps attached as Exhibits 5 and 6 to the Lew/Verses/Garzillo Declaration show these fiber routes. *See Omaha Forbearance Order* ¶ 66 (relying on similar maps); *Verizon/MCI Order* ¶ 45 (same). As the maps demonstrate, these competitive fiber routes reach virtually all areas in the New York MSA where enterprise customers are concentrated. For example, there are one or more known competing fiber providers in at least [Begin Proprietary] [End Proprietary] percent of the [Begin Proprietary] [End Proprietary] wire centers in the New York MSA that account for 80 percent of Verizon's high-capacity special access revenues. *See Lew/Verses/Garzillo Decl.* ¶ 46 & Exhibit 5. Similarly, there are at least one or more known competing fiber providers in wire centers that account for approximately [Begin Proprietary] [End Proprietary] percent of Verizon's retail switched business lines in the MSA. *See id.* ¶ 46.

Third, in addition to the cable companies, a large number of other competitors provide extensive retail competition in the New York MSA. Such competitors include traditional telecom carriers such as AT&T, Level 3, Sprint, Global Crossing, Broadwing, XO, and One Communications; managed service providers and systems integrators such as IBM, Electronic Data Systems Corp., Accenture, Northrop Grumman, and Lockheed Martin; and equipment vendors such as Lucent and Nortel. *See id.* ¶ 50.

These carriers are using these facilities to serve customers throughout the New York MSA. In the *Omaha Forbearance Order*, the Commission relied on E911 data to evaluate the extent of competition in an MSA but acknowledged that these data, which are divided between residential and business customers, do not correspond to the distinctions between the mass-market and the enterprise market that the Commission has recognized. *See Omaha Forbearance Order* ¶¶ 28-29 & n.78. In particular, some

business E911 listings are for very small businesses that the Commission has defined as part of the mass-market rather than as part of the enterprise market. *See id.* The Commission also has recognized, however, that competition for enterprise customers is generally even more extensive than for small business customers that are part of the mass market.<sup>43</sup> It follows, therefore, that even though data on business E911 listings may include small businesses, it is a reliable indicator of competition for enterprise customers as well.

According to E911 listings data as of the end of December 2005, competing carriers were using their own switches to serve business lines in **[Begin Proprietary]** **[End Proprietary]** percent of the wire centers in the New York MSA, and these wire centers represent **[Begin Proprietary]** **[End Proprietary]** percent of Verizon's retail switched business lines in the MSA. *See* Lew/Verses/Garzillo Decl.

¶ 47. Based on these same data, competing carriers have obtained at least **[Begin Proprietary]** **[End Proprietary]** business E911 listings in the New York MSA, which represents approximately **[Begin Proprietary]** **[End Proprietary]** percent of switched business lines in the MSA. *See id.*<sup>44</sup> In the last five years alone, Verizon's retail business switched access lines have declined by **[Begin Proprietary]**

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<sup>43</sup> *See, e.g., Verizon/MCI Order* ¶ 56 (finding that "competition for medium and large enterprise customers . . . [is] strong . . . because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there [are] a significant number of carriers competing in the market.").

<sup>44</sup> These data provide an estimate of the number of business lines competitors are serving. Each E911 residential subscriber listing necessarily represents one customer access line, but in the case of business customers, a listing does not necessarily correlate one-to-one based on the manner in which the service is provided. Importantly, competitors typically do not obtain E911 listings for lines that are used to provide data services. *See* Lew/Verses/Garzillo Decl. ¶ 47.

[End Proprietary] percent, even though the population in the MSA increased by at least 2 percent during that same time. *See id.* ¶ 12. And as the Commission has recognized, there was extensive competition in the New York MSA even before this time.<sup>45</sup>

In the *Omaha Forbearance Order*, the Commission also considered “evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest” as relevant in its analysis of enterprise competition. *Omaha Forbearance Order* ¶ 68. The Commission held that “this competition that relies on Qwest’s wholesale inputs – which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest’s telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1).” *Id.*<sup>46</sup> As in Omaha, competitors in the New York MSA are competing extensively using special access obtained from Verizon. Based on Verizon’s wholesale billing records from December 2005, competitors are using Verizon’s special access services to serve business customers in [Begin Proprietary] [End Proprietary] percent of the wire centers in the New York MSA, which account for more than [Begin Proprietary] [End Proprietary] percent of Verizon’s retail switched business lines in the MSA. *See* Lew/Verses/Garzillo Decl. ¶ 48. As of the end of

<sup>45</sup> *See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 427 (1999), *aff’d*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

<sup>46</sup> The forbearance that Verizon seeks here will not eliminate Verizon’s obligations under sections 201 and 202 to provide traditional TDM technology on just, reasonable, and nondiscriminatory terms. In addition, the *Verizon/MCI Order* prohibits Verizon from raising its DS1 and DS3 special access rates for 30 months following the merger closing date. *Verizon/MCI Order*, Appendix G.

December 2005, competitors were serving approximately [Begin Proprietary]

[End Proprietary] voice-grade equivalent lines using DS3s and approximately [Begin Proprietary] [End Proprietary] voice-grade equivalent lines using DS1s, with special access service obtained from Verizon. *See id.*

**III. THE FINAL PART OF THE FORBEARANCE TEST IS SATISFIED  
BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST**

As the Commission found in the *Omaha Forbearance Order*, evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test (47 U.S.C. § 160(a)(3)) is met – that eliminating the regulations in question is in the public interest. *See Omaha Forbearance Order* ¶¶ 47, 75. As demonstrated above, competition in the New York MSA is even more advanced than in Omaha. Cable voice services in the New York MSA are just as widely available as they were in Omaha, and other types of competition are even more widespread. In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance of the regulations at issue was in the public interest, both of which apply with equal force here.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Verizon faces in the New York MSA outweigh the benefits. *See id.* ¶ 76. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. As the Commission has explained, “excessive network unbundling requirements tend to undermine the incentives of both incumbent

LECs and new entrants to invest in new facilities and deploy new technology.”<sup>47</sup>

Similarly, the D.C. Circuit has recognized that mandated unbundling “imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities.”<sup>48</sup> Given the extensive facilities-based competition that already exists in the New York MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while the costs of such regulatory intervention are significant. *See Omaha Forbearance Order* ¶ 77. Forbearance will give both Verizon and other facilities-based competitors greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation also will “further the public interest by increasing regulatory parity” between telecommunications providers in the New York MSA. *Id.* ¶ 78; *see id.* ¶ 49. As explained above, these regulations were imposed at a time when Verizon’s narrowband circuit-switched network was a dominant technology, but this is far from the case today. Verizon is now losing mass-market and enterprise lines and customers to wireless and broadband wireline competitors. As the Commission noted, it is “in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms.” *Id.* ¶ 78. In the face of such competition, asymmetrical regulation imposes

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<sup>47</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 3 (2003) (subsequent history omitted).

<sup>48</sup> *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

artificial price constraints that delay and impede full fair competition among providers and harms consumers.<sup>49</sup>

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged. *See Omaha Forbearance Order* ¶ 47. As demonstrated above, competition is more advanced in the New York MSA as it was in Omaha. Cable voice services in the New York MSA are just as widely available as they were in Omaha, and other types of competition are even more widespread. Moreover, with respect to interstate switched access services, competitive wireless services – which are ubiquitous throughout the New York MSA – are particularly significant because customers can use their wireless phones for long-distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long-distance calls and minutes have already migrated to wireless. *See Lew/Verses/Garzillo Decl.* ¶¶ 34, 35.

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the unnecessary costs such regulations impose. In particular, “[i]n these environments that are competitive for end users, applying these dominant carrier regulations to [Verizon] limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages.” *Omaha Forbearance Order* ¶ 47.

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<sup>49</sup> *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 45, 71, 79 & n.241 (2005).

The Commission has similarly recognized in other contexts that certain “regulations associated with dominant carrier classification can also have undesirable effects on competition.”<sup>50</sup> For example, the Commission has recognized that tariffing requirements “impose significant administrative burdens on the Commission and the [BOCs],” and “adversely affect competition.” *LEC Classification Order* ¶ 89. Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Similarly, the Commission’s price cap regulations limit Verizon’s ability to respond to market conditions and competition. Unlike other providers in the New York MSA, to whom price cap regulation does not apply, Verizon is restricted from responding to competition with deaveraged rates and cannot respond to competitors’ bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others’ pricing or to maintain artificially high prices.

For these reasons, dominant carrier regulation of the switched-access market is not only unnecessary to ensure just, reasonable, and nondiscriminatory rates and to protect consumers, but it would be affirmatively detrimental to competition and harmful to the public interest.

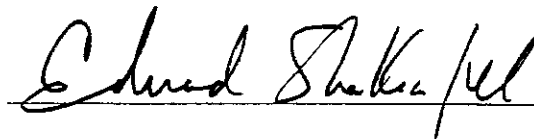
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<sup>50</sup> *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶ 90 (1997) (“*LEC Classification Order*”).

CONCLUSION

For the foregoing reasons, Verizon requests that the Commission grant relief that is parallel to the relief granted in the *Omaha Forbearance Order* and forbear from loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c) and dominant carrier regulation for switched access services in the New York MSA.

Respectfully submitted,



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September 6, 2006





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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|  |   |                     |
|--|---|---------------------|
| In the Matter of                       | ) |                     |
|  | ) |                     |
| Petition of the Verizon Telephone      | ) | WC Docket No. _____ |
| Companies for Forbearance Pursuant to  | ) |                     |
| 47 U.S.C. § 160(c) in the              | ) |                     |
| New York Metropolitan Statistical Area | ) |                     |

**DECLARATION OF QUINTIN LEW, JUDY VERSES, AND PATRICK GARZILLO  
REGARDING COMPETITION IN THE  
NEW YORK METROPOLITAN STATISTICAL AREA**

**I. INTRODUCTION AND SUMMARY**

1. My name is Quintin Lew. My business address is One Verizon Way, Basking Ridge, NJ 07920. I am Vice President -- Marketing and Sales in the Verizon Partner Solutions Group (formerly known as Wholesale Markets) and have worked in this organization for 3 years. In this capacity, I am responsible for competitive and market analysis as well as the product management and marketing of our Special Access Products. I have over 20 years with Verizon or its predecessors in most areas of marketing, strategic planning, and business development. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4, 9-10, 30-38, 43-46, and 50-71 of this Declaration.

2. My name is Judy Verses. My business address is One Verizon Center, MC: VC11W403, Basking Ridge, NJ 07920. I am Sr. Vice President – Marketing Operations and have worked for Verizon for twenty-three years, including positions in Sales and Product Line Management. For the past 4 years I have had marketing responsibility for Consumer and Small Business Customers. My current responsibilities include alternate channel development, multi-cultural sales and marketing, market research and marketing analytics, as well as competitive intelligence. In this capacity, I have information and knowledge relating to the third party

sources of data Verizon has used to identify competitive local exchange carrier (“CLEC”) fiber transport and loop facilities and to determine the correlation between customer telecommunication spending and CLEC deployment of fiber facilities as described specifically in paragraphs 4, 6-7, 12-17, 19-20, 22-24, 26, 29-36, and 39- 42 of this declaration.

3. My name is Patrick Garzillo. My business address is One Verizon Way, Basking Ridge, New Jersey 07920-1097. I am Vice President – Finance, Service Costs and Analysis for Verizon, and I have more than 35 years of experience with Verizon and its predecessor companies. My current responsibilities include managing and supervising the development, preparation and analysis of economic cost information, embedded costs of regulated and non-regulated services, separated costs, supporting data, cost analysis, and Universal Service Fund related issues. I also support the development of key marketing strategies, regulatory policies, and legislative positions for Verizon through financial analysis associated with a broad array of state and federal regulatory issues. In this capacity, I have information and knowledge relating to the sources of data described specifically in paragraphs 4, 6-8, 10-12, 18, 21, 25, 27-28, 38, 46-49, 52, and 54-66 of this declaration.

4. The purpose of this declaration is to demonstrate that there is extensive facilities-based competition in the New York-Northern New Jersey-Long Island, NY-NJ-PA metropolitan statistical area (“New York MSA”), using the framework the Commission applied in the *Omaha Forbearance Order*.<sup>1</sup> Consistent with that framework, we provide a competitive showing for mass-market switched access and enterprise services.

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<sup>1</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (“*Omaha Forbearance Order*”).

5. Our declaration and accompanying exhibits contain information collected from publicly available sources and internal Verizon databases. We have identified the sources of all publicly available information on which we rely. We also supervised the collection of data from Verizon's internal databases. Our declaration and exhibits accurately reflect the data contained in those databases. For purposes of this declaration, all competitive data that were previously attributed to MCI (such as line counts) have been attributed to Verizon.<sup>2</sup> A summary of the data is set forth below.

6. There are approximately 7 million households and 18.7 million people in the New York MSA.<sup>3</sup> Approximately two-thirds of the population live in the ten counties in New York; one-third of the population lives in the 12 counties in New Jersey, and only 0.3 percent of the population lives in Pike County, Pa.<sup>4</sup> As of the end of December 2005, Verizon was providing service to approximately \*\*\*\* access lines in the New York MSA – more than \*\*\*\* residential lines and more than \*\*\*\* business lines.<sup>5</sup>

7. There are three incumbent cable operators that serve non-overlapping portions of the New York MSA: Cablevision, whose network passes approximately 3.3 million homes in the MSA, centered mainly in Long Island, Westchester and Rockland Counties, and northern

<sup>2</sup> Calculations involving declines in access lines over time and the percentage of Verizon lines in wire centers served by competitors do not attribute MCI data to Verizon.

<sup>3</sup> U.S. Census Bureau, *County-Level Housing Unit Dataset*, [http://www.census.gov/popest/housing/files/HU-EST2005\\_US.CSV](http://www.census.gov/popest/housing/files/HU-EST2005_US.CSV) (2005 estimates); U.S. Census Bureau, *Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas*, <http://www.census.gov/population/www/estimates/metropop/2005/cbsa-01-fmt.xls> (2005 estimates).

<sup>4</sup> U.S. Census Bureau, *County Population Dataset*, <http://www.census.gov/popest/counties/files/CO-EST2005-ALLDATA.csv> (2005 estimates). Verizon is not the only incumbent LEC in the New York MSA: Warwick Valley Telephone serves a portion of Sussex and Passaic Counties in New Jersey; Lackawaxen Telecommunications serves a portion of Pike County, Pa.; and Sprint serves a portion of Sussex, Morris, Hunterdon, and Somerset Counties in New Jersey.

<sup>5</sup> Data include lines served by MCI as of the end of December 2005. Verizon access line data cited throughout this declaration are based on voice-grade equivalent lines.

New Jersey; Time Warner, whose network passes approximately 2.1 million homes in the MSA, centered mainly in Manhattan, Queens, Staten Island, areas of Brooklyn, and North Bergen, N.J.; and Comcast, whose network passes approximately 834,000 homes in the MSA, centered in New Jersey. In addition, RCN operates an overbuild network centered in Manhattan and Queens. Each of these cable operators provides broadband and voice services over its networks in the New York MSA. Together, they are providing mass-market voice service to wire centers that account for \*\*\*\* percent of Verizon's residential access lines in the MSA.<sup>6</sup>

Competitive wireless services and over-the-top voice services also are available throughout the MSA, and there are also traditional CLECs that provide facilities-based switched access service to mass-market customers.

8. As a result of this competition, Verizon's retail residential switched access lines have declined in the New York MSA – by approximately \*\*\*\* percent from 2000 to 2005 – even though the number of households in the MSA increased by approximately 2 percent during this time.<sup>7</sup> Based on the necessarily incomplete data available to Verizon that do not include various forms of intermodal competition, competitors currently provide service to approximately \*\*\*\* percent of residential lines in Verizon's service area in the New York MSA.

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<sup>6</sup> This figure is presented as a range because Verizon's data do not in all cases allow an E911 listing to be associated with a specific wire center. The low end of the range is based on the E911 listings that can be directly attributed to a specific wire center (because there is only one wire center associated with the NPA-NXX code for the E911 listing), and therefore represents the minimum number of wire centers (and associated access lines) in which competing carriers are providing service. The high end of the range is derived by applying an allocation methodology to those E911 listings that cannot be directly attributed to a specific wire center (because there is more than one possible wire center associated with the NPA-NXX code for the E911 listing). This methodology proportionally assigns E911 listings to each of the possible wire centers with which the E911 listing can be associated.

<sup>7</sup> U.S. Census Bureau, *County-Level Housing Unit Dataset*, [http://www.census.gov/popest/housing/files/HU-EST2005\\_US.CSV](http://www.census.gov/popest/housing/files/HU-EST2005_US.CSV).

9. There also is robust competition for enterprise customers in the New York MSA. There is a wide variety of competing providers serving these customers, including cable companies, interexchange carriers, competitive LECs, other incumbent LECs, systems integrators, and equipment vendors. The major cable operators in the New York MSA offer service to business customers, using both their cable networks and fiber networks that they have deployed specifically to serve business customers. Other competitors are using a combination of their own facilities, facilities obtained from third-party providers, and special access obtained from Verizon.

10. According to data from GeoTel, there are at least 24 known competing carriers that operate fiber networks within the New York MSA and these networks span at least \*\*\*\* route miles. As GeoTel itself recognizes, its information regarding CLEC fiber routes, while extensive, is not comprehensive. GeoTel continually works to update its databases, and it provides Verizon with updates approximately every six months. Each of these updates contains new information. Moreover, GeoTel does not have complete data for every CLEC. During the course of the Verizon/MCI merger, for example, Verizon received other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data. Thus, there is reason to believe that the GeoTel information understates, perhaps significantly, the extent to which CLECs have self-provisioned fiber facilities. In the New York MSA, GeoTel data on fiber route miles are significantly understated as they show only \*\*\*\* of fiber for AT&T, which operates what is likely the largest competitive fiber network in the New York MSA. According to these data, there are at least one or more known competing fiber providers in \*\*\*\* percent of wire centers in the New York MSA, and these wire centers

represent approximately \*\*\*\*\* percent of Verizon's retail switched business lines in the MSA.

11. Based on Verizon's business E911 listings data as of the end of December 2005, competing carriers are serving business customers in \*\*\*\*\* percent of the wire centers in the New York MSA, and these wire centers account for \*\*\*\*\* percent of Verizon's retail switched business lines in the MSA. As of this same date, competitors are using special access to serve business customers in \*\*\*\*\* percent of wire centers in the New York MSA. These wire centers serve more than \*\*\*\*\* percent of Verizon's retail switched business lines in the MSA.

12. As a result of this competition, Verizon's retail switched business access lines have declined in the New York MSA – by approximately \*\*\*\*\* percent from 2000 to 2005 – even though the population in the MSA increased by approximately 2 percent during this time.<sup>8</sup> As of the end of December 2005, competitors in the New York MSA had obtained approximately \*\*\*\*\* business E911 listings, and were serving approximately \*\*\*\*\* voice-grade equivalent lines using special access and private lines obtained from Verizon.

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<sup>8</sup> U.S. Census Bureau, *Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas*, <http://www.census.gov/population/www/estimates/metropop/2005/cbsa-01-fmt.xls>.

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## II. COMPETITION FOR MASS-MARKET SWITCHED ACCESS SERVICES

13. The wireline telephone business has undergone and is continuing to undergo fundamental change. Cable, wireless, Voice over Internet Protocol ("VoIP"), e-mail, and instant messaging are all being used as replacements for traditional wireline services. At the end of 2005, cable companies already offered voice telephone service to approximately 57 percent of homes nationwide, and by the end of 2008, 94 percent of homes will have access to voice telephone service from a cable company.<sup>9</sup> There are also multiple over-the-top VoIP providers such as Vonage, Packet8, VoicePulse, Skype, and Lingo that offer service nationwide to anyone with a cable modem or other type of broadband connection. Wireless carriers are aggressively competing both for lines and for traffic. At least 69 percent of the U.S. population now has a wireless phone,<sup>10</sup> and at least 10 percent of wireless subscribers have given up their wireline

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<sup>9</sup> See C. Moffett, *et al.*, Bernstein Research, *Quarterly VoIP Monitor: Six Million and Counting* at Exhibit 17 (June 12, 2006).

<sup>10</sup> CTIA, *Wireless Quick Facts*, [http://files.ctia.org/pdf/Wireless\\_Quick\\_Facts\\_April\\_06.pdf](http://files.ctia.org/pdf/Wireless_Quick_Facts_April_06.pdf). The Yankee Group estimates that more than 70 percent of U.S. households have a wireless



phone while at least 14 percent use their wireless phone as their primary phone.<sup>11</sup> According to an analysis by JP Morgan, ILECs nationwide have lost approximately 9 percent of their primary access lines to wireless.<sup>12</sup> They have lost an additional 7 percent of their primary lines to cable and other VoIP providers.<sup>13</sup> And they have lost 6 percent of their lines to CLECs.<sup>14</sup> JP Morgan estimates that, by 2010, wireless will capture 18 percent of primary lines while cable and other VoIP providers will capture 28 percent.<sup>15</sup>

#### A. Cable

14. Each of the three major incumbent cable operators in the New York MSA – Cablevision, Time Warner, and Comcast – offers competitive voice services in its service territory. Collectively, these three cable operators serve approximately 90 percent of the homes in the New York MSA.<sup>16</sup>

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phone. K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 4 (Dec. 2005).

<sup>11</sup> K. Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* at 5 (July 27, 2005); C. Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004). See also J. Armstrong, et al., Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 (Jan. 13, 2006) (wireless-only customers represent a 12.5 percent share of the residential market).

<sup>12</sup> J. Chaplin, et al., JP Morgan, *State of the Industry: Consumer* at Table 57 (Jan. 17, 2006).

<sup>13</sup> See *id.* at Tables 57 & 72 (lines served by cable and other VoIP providers as a percentage of total telephony households).

<sup>14</sup> See *id.* & Table 21 (excluding lines lost to MCI).

<sup>15</sup> See *id.* at 10-12. Some analysts expect cable telephony to enjoy a share of more than 30 percent of all U.S. households by the end of 2010. See F. Louthan, et al., Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 3 (July 5, 2006) (citing IDC estimates).

<sup>16</sup> Media Business Corp., *Top 10 MSOs by County* (Mar. 2004); U.S. Census Bureau, *County-Level Housing Unit Estimates*, <http://www.census.gov/popest/housing/files/HU-EST2004-CO.csv> (2004 estimates).

15. Cablevision is the largest cable operator in the New York MSA. Its network passes approximately 3.3 million homes in the MSA (approximately 46 percent of the total).<sup>17</sup>

As the map in Exhibit 3 indicates, its network is centered mainly in Long Island, Westchester and Rockland Counties, and northern New Jersey.

16. In 2003, Cablevision became the first cable operator in the U.S. to deploy IP-based telephone service *throughout* its cable service territory.<sup>18</sup>

17. Cablevision “offers customers a highly reliable voice service with superior value,” and claims to have “the most highly penetrated VoIP service in the nation.”<sup>19</sup> In July 2006, Cablevision announced that with more than one million subscribers, Optimum Voice “has already been embraced by one-third of [Cablevision’s] cable television customers and more than half of [the company’s] high-speed Internet customers.”<sup>20</sup> Cablevision reports that it is adding an average of more than 9,000 voice subscribers each week.<sup>21</sup> Analysts expect that Cablevision will be the voice provider for 27 percent of the homes it passes by the end of 2006.<sup>22</sup> In the New

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<sup>17</sup> Media Business Corp., *Top 10 MSOs by County* (Mar. 2004); U.S. Census Bureau, *County-Level Housing Unit Estimates*, <http://www.census.gov/popest/housing/files/HU-EST2004-CO.csv> (2004 estimates).

<sup>18</sup> Cablevision News Release, *Cablevision Completes Network Rebuild* (Dec. 3, 2003).

<sup>19</sup> Cablevision News Release, *Optimum Online and Optimum Voice Named Nation’s Top High-Speed Internet and VoIP Services in 18th Annual PC Magazine Reader Satisfaction Study* (Nov. 15, 2005).

<sup>20</sup> Cablevision News Release, *Cablevision’s Optimum Voice Surpasses One Million Voice Customers* (July 18, 2006) (statement by Cablevision chief operating officer Tom Rutledge).

<sup>21</sup> See Cablevision Press Release, *Cablevision Systems Corporation Reports Second Quarter 2006 Selected Operating and Financial Measures* (Aug. 8, 2006).

<sup>22</sup> C. Moffett, et al., Bernstein Research, *Cable 2Q06 Preview: The Ideal Defensive? Raising Target Prices for Comcast and Cablevision* at Exhibit 46 (July 11, 2006).

York MSA, Cablevision offers Optimum Voice service with unlimited local and long-distance calls, and calling features including voicemail, for \$34.95 per month.<sup>23</sup>

18. When a cable company wins a new residential subscriber, it typically obtains an E911 listing for that subscriber. Based on its E911 listings as of the end of December 2005, Cablevision is providing mass-market voice service to customers in wire centers in the New York MSA that account for \*\*\*\* percent of Verizon's residential access lines in the MSA. Based on these same data, Cablevision provides service to approximately \*\*\*\* residential lines in the New York MSA.

19. Time Warner Cable is the second largest cable operator in the New York MSA and the largest cable operator in New York state as a whole.<sup>24</sup> Time Warner's network passes approximately 2.1 million homes in the New York MSA.<sup>25</sup> As the map in Exhibit 3 indicates, its networks is centered mainly in Manhattan, Queens, Staten Island, areas of Brooklyn, and North Bergen, N.J. According to a map on Time Warner Cable's website of the availability of digital phone service, the company is "ready" to provide phone service throughout its entire footprint in the New York MSA.<sup>26</sup>

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<sup>23</sup> Cablevision, *Optimum Voice Pricing*, <http://www.optimumvoice.com/index.jhtml?pageType=pricing>. Cablevision requires a subscription to Cablevision broadband service. Cablevision, *Optimum Voice Legal Disclaimer*, [http://www.optimumvoice.com/index.jhtml?pageType=legal\\_disclaimer](http://www.optimumvoice.com/index.jhtml?pageType=legal_disclaimer).

<sup>24</sup> Media Business Corp., *Top 10 MSOs by County* (Mar. 2004); Time Warner Cable, *Time Warner Cable – Syracuse Division*, <http://www.timewarnercable.com/centralny/aboutus/syracuse.html>.

<sup>25</sup> Media Business Corp., *Top 10 MSOs by County* (Mar. 2004).

<sup>26</sup> Time Warner Cable of New York and New Jersey, *Digital Phone Availability Map*, <http://www2.twcny.com/pressDP/maps/linklist2.cfm>.

20. Time Warner provides voice service to more than 1.6 million customers nationwide, and reports that it is adding an average of 18,000 customers each week.<sup>27</sup> The company claims to be “the 10th largest phone company in America.”<sup>28</sup> In the New York MSA, Time Warner offers unlimited local and long-distance calling with calling features including voicemail for \$39.95 to customers who subscribe to other Time Warner services, or \$49.95 per month as a standalone service.<sup>29</sup>

21. Based on its E911 listings as of the end of December 2005, Time Warner Cable is providing mass-market voice service to customers in wire centers in the New York MSA that account for \*\*\*\* percent of Verizon’s residential access lines in the MSA. Based on these same data, Time Warner Cable provides service to approximately \*\*\*\* residential lines in the New York MSA. For purposes of this analysis, we attributed residential E911 listings that Sprint obtained to Time Warner, because Time Warner uses the wholesale VoIP services that Sprint offers, including, among things, E911 listings services.<sup>30</sup>

<sup>27</sup> See Time Warner Press Release, *Time Warner Inc. Reports Second Quarter 2006 Results* (Aug. 2, 2006).

<sup>28</sup> *Time Warner Inc. at Credit Suisse First Boston Media Week – Final*, FD (Fair Disclosure) Wire, Transcript 120805ae.718 (Dec. 8, 2005) (Time Warner Inc. chairman and CEO Dick Parsons).

<sup>29</sup> Time Warner Cable, *Time Warner Cable of New York and New Jersey Plan Details*, <http://www.timewarnercable.com/nyandnj/products/digitalphone/plandetails.html>; Time Warner Cable, *Time Warner Cable of New York and New Jersey Packages and Pricing*, <http://www.timewarnercable.com/nyandnj/products/cable/packagesandpricing.html?menu=6909>.

<sup>30</sup> See Sprint Press Release, *Sprint, Time Warner Cable Sign Agreement That Helps Enable Time Warner Cable To Offer Telecom Services* (Dec. 8, 2003); Sprint Press Release, *Time Warner Cable and Sprint Nextel Expand Wireline Telephony Services Relationship* (Aug. 3, 2006). See also Letter from Julie Y. Patterson, Time Warner Cable, to Marlene H. Dortch, WC Docket Nos. 04-36 & 05-196, at 2 (Nov. 28, 2005) (“In some geographic areas, Time Warner Cable interconnects directly to the existing wireline 911 network in the area, so that 911 calls are transmitted directly from Time Warner Cable’s own or leased facilities . . . to the geographically appropriate PSAP. In other areas, Time Warner Cable interconnects to the wireline 911 network indirectly, through service agreements with carriers such as Sprint and MCI.”).

22. Comcast is the largest provider of cable television service in the U.S. Comcast's network passes approximately 834,000 homes in the New York MSA.<sup>31</sup> As the map in Exhibit 3 indicates, its network is centered in New Jersey.

23. Comcast began offering VoIP service in northern New Jersey in September 2005.<sup>32</sup> As of June 2006, Comcast offered circuit-switched voice telephone service and VoIP to 60 percent of its footprint nationwide, or 26 million homes.<sup>33</sup> According to its chairman, Comcast plans to market its voice service to 80 percent of its footprint by the end of 2006.<sup>34</sup>

24. Comcast is providing service to more than 1.7 million customers nationwide, and reports that it is adding an average of more than 17,000 customers per week.<sup>35</sup> The company recently stated that "[t]he next several years will provide tremendous growth opportunities for Comcast. Comcast Digital Voice is available to more people every day, and by the end of this year we will be marketing our 'Triple Play' package of video, voice and data services to the majority of our customers. This will continue to reinforce our competitive advantage and position us to deliver more value to our customers and shareholders."<sup>36</sup> In the New York MSA, Comcast currently offers unlimited local and long-distance calling with calling features including voicemail for \$39.95 to \$44.95 per month for customers who subscribe to other Comcast

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<sup>31</sup> Media Business Corp., *Top 10 MSOs by County* (Mar. 2004).

<sup>32</sup> See M. Scanlon, *Meet the System: Northern New Jersey – Comcast Bets Slow & Steady Will Beat the Competition*, Cable World (Aug. 29, 2005).

<sup>33</sup> Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006).

<sup>34</sup> CMCSA – Comcast Corporation at Sanford C. Bernstein & Co. Strategic Decisions Conference, Thomson StreetEvents at 5 (June 2, 2006) (statement of Brian Roberts). This does not include systems Comcast recently acquired from Adelphia and Time Warner.

<sup>35</sup> See Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006).

<sup>36</sup> Comcast Press Release, *Comcast Reports First Quarter 2006 Results* (Apr. 27, 2006) (quoting Brian L. Roberts, Chairman and CEO of Comcast Corporation).

services, or \$54.95 per month as a standalone service.<sup>37</sup> Comcast also offers voice service at a promotional rate of \$33 per month for the first year, when purchased as a bundle with digital cable and high-speed Internet service.<sup>38</sup>

25. Based on its E911 listings as of the end of December 2005, Comcast is providing mass-market voice service to customers in wire centers in the New York MSA that account for at least \*\*\*\* percent of Verizon's residential access lines in the MSA. Based on these same data, Comcast provides service to approximately \*\*\*\* residential lines in the New York MSA.

26. RCN describes itself as "one of the largest facilities-based competitive providers of bundled phone, cable and high speed internet services delivered over its own fiber-optic local network to consumers in the most densely populated markets in the U.S."<sup>39</sup> In the New York MSA, RCN operates an overbuild network that "serves much of Manhattan, and in Queens, RCN serves the communities of Corona, Elmhurst, Long Island City, Astoria, Jackson Heights, Maspeth, Rego Park, Woodside, Fresh Meadows and Wavecrest."<sup>40</sup> RCN's network therefore overlaps with the network of Time Warner. According to company statements, RCN appears to offer voice service to all of its subscribers in the New York MSA.<sup>41</sup> RCN currently offers

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<sup>37</sup> Comcast, *Comcast Digital Voice Service: Residential Pricing List (Effective: August 18, 2006)*, New Jersey, <http://www.comcast.com/MediaLibrary/1/1/About/PhoneTermsOfService/PDF/DigitalVoice/StatePricingLists/NewJersey/Z62T95New%20Jersey%20pricing%20list%20V3.pdf>.

<sup>38</sup> Comcast, *See Prices & Choose Plans: Comcast Bundles*, <http://www.comcast.com/shop/buyflow/default.ashx>.

<sup>39</sup> RCN, *Investor Relations*, <http://investor.rcn.com/index.cfm>.

<sup>40</sup> RCN, *Regional Coverage: New York*, <http://www.rcn.com/company/NY/newyork.php>.

<sup>41</sup> RCN describes itself as a "facilities-based, competitive provider of video, high-speed data and voice services," which are "delivered over its broadband network to customers in the Boston, New York, eastern Pennsylvania, Washington, DC, Chicago, San Francisco, and Los Angeles markets." RCN, Form 10-K/A at 6 (SEC filed Apr. 10, 2006). RCN's website offers "New

unlimited local and long-distance calling with calling features including voicemail for a promotional rate of \$30 per month for the first year.<sup>42</sup>

27. Based on its E911 listings as of the end of December 2005, RCN is providing mass-market voice service to customers in wire centers in the New York MSA that account for \*\*\*\*\* percent of Verizon's residential access lines in the MSA. Based on these same data, RCN provides service to approximately \*\*\*\*\* residential lines in the New York MSA.

28. Together, Cablevision, Time Warner, Comcast, and RCN are providing mass-market voice services to wire centers in the New York MSA that account for \*\*\*\*\* percent of Verizon's residential access lines in the MSA. They collectively serve approximately \*\*\*\*\* residential access lines in the MSA.

29. Mass-market voice services offered by cable companies are typically priced at or below comparable offerings from Verizon. Exhibit 1 is a chart that compares the prices and features of voice telephone service offerings of the leading cable competitors in the New York MSA. See Exhibit 1. This chart shows that cable offerings are very competitive.

#### **B. Wireless**

30. There are multiple competitive wireless providers serving the New York MSA. As the maps in Exhibit 4 illustrate, Cingular, Sprint Nextel, and T-Mobile all provide service in

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York Local Calling Plans" that appear to be available to all of its New York subscribers. See RCN, *Regional Coverage, New York Local Calling Plans*, [http://www.rcn.com/company/NY/ny\\_callingplans.php](http://www.rcn.com/company/NY/ny_callingplans.php).

<sup>42</sup> RCN, *Special Offers*, <http://www.rcn.com/specialoffers/offer.php?id=13>. A one-year contract is required for this promotion, and RCN charges an additional \$15 per month for unlimited local and long-distance calling after the first year. *Id.*

the MSA,<sup>43</sup> and competitive wireless service from at least one of these carriers is available throughout the MSA.

31. These wireless carriers all provide service that is competitive with wireline service for comparable offerings. Exhibit 1 is a chart that compares some of the voice telephone service offerings of these wireless competitors in the New York MSA with Verizon's wireline service offering. *See* Exhibit 1. The service packages listed on the chart are those most prominently featured in advertising materials and are most comparable between service providers. The chart demonstrates that wireless providers in the New York MSA offer buckets of minutes and other features at prices that are competitive with comparable packages offered by Verizon and other wireline providers.

32. Wireless carriers are now competing with wireline carriers both for local access lines and, even more extensively, for long-distance calls, as well as local calls. For a growing number of customers, wireless service is displacing landline telephone service. During the last few years, the number of wireless subscribers has grown from 140 million to more than 207 million, growing at more than 20 million new wireless subscribers each year.<sup>44</sup> By contrast, there are approximately 175 million wireline access lines, and that number is declining each year.<sup>45</sup> According to the FCC's recent *Local Competition Report*, the number of national

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<sup>43</sup> Verizon Wireless also provides service throughout the New York MSA.

<sup>44</sup> CTIA, *CTIA's Semi-Annual Wireless Industry Survey Results*, <http://files.ctia.org/pdf/CTIAEndYear2005Survey.pdf>.

<sup>45</sup> *See, e.g.*, Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2005* at Table 1 (July 2006) (End-user switched access lines have declined steadily since their peak in December 2000).



wireless subscribers has continued to grow rapidly (by approximately 12 percent) in the last year, while the number of wireline access lines has declined.<sup>46</sup>

33. Lehman Brothers estimates that 20 million wireline access lines have been lost to wireless since 1999, and that wireless will continue to win more than 6 million new subscribers from wireline each year.<sup>47</sup> Deutsche Bank states that “wireless cannibalization” amounts to “more than 1m lines lost per quarter.”<sup>48</sup> Analysts predict that the number of wireless-only users will grow to 20-25 percent of the market by 2010.<sup>49</sup> A Harris Interactive survey found that 39 percent of current landline customers are interested in going wireless altogether in the next two years.<sup>50</sup> Even if they are not replacing their landline phone altogether, at least 14 percent of U.S. consumers now use their wireless phone as their primary phone.<sup>51</sup> And even larger percentages of young consumers – which will make up the next generation of homeowners – are

<sup>46</sup> See *id.* at Tables 1 & 14.

<sup>47</sup> See B. Bath, Lehman Brothers, *Telecom Services - Wireline* at Figure 11 (July 7, 2005). See also T. Horan, *et al.*, CIBC World Markets, *3Q05 Communications and Cable Services Review* at Exhibit 12 (Nov. 23, 2005) (estimating wireless substitution at 20 million lines as of year-end 2005, increasing by 5-6 million lines each year through 2007).

<sup>48</sup> V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* at 6 (Feb. 28, 2005). See also F. Louthan, *et al.*, Raymond James, *VZ, SBC, BLS, Q: Cable Threat Comparison for RBOCs* at 2 (July 11, 2005) (“look for wireless substitution to be the largest displacer of access lines over the next five years”).

<sup>49</sup> See D. Barden, *et al.*, Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share* at 4 (June 14, 2005); F. Louthan, *et al.* Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 2 (July 5, 2006) (predicting 25 percent wireless substitution by 2010).

<sup>50</sup> See National Consumers League Press Release, *National Consumers League Releases Comprehensive Survey about Consumers and Communications Services* (July 21, 2005).

<sup>51</sup> C. Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004) (“14.4% of US consumers currently use a wireless phone as their primary phone”). See also J. Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 (Jan. 13, 2006) (wireless-only customers represent a 12.5 percent share of the residential market).